

In the Matter of Merchant Mariner's Document No. Z-774844
Issued to: THOMAS JOHN WALSH

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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THOMAS JOHN WALSH

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 2 August, 1951, an Examiner of the United States Coast Guard at New Orleans, Louisiana, revoked Merchant Mariner's Document No. Z-774844 issued to Thomas John Walsh upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as steward utility on board the American SS ALCOA CLIPPER under authority of the document above described, on or about 2 August, 1951, while said vessel was in the port of New Orleans, Louisiana, he wrongfully had approximately one grain of marijuana in his possession.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by counsel of his own selection, Appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "not guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer and Appellant made their opening statements and the Investigating Officer introduced in evidence the testimony of the Port Patrol Officer who found the marijuana in Appellant's suitcase, the Customs Inspector in charge of the searching party, and the U. S. Customs Laboratory chemist who analyzed the marijuana.

In defense, Appellant testified under oath in his own behalf.

At the conclusion of the hearing, having heard the argument of the Investigating Officer and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the specification and entered the order revoking Appellant's Merchant Mariner's Document No. Z-774844 and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority.

From that order this appeal has been taken, and it is urged that Appellant was not afforded sufficient time to prepare his defense and obtain witnesses since the hearing was conducted on the same day on which he was served with the charge and specification; that, prior to the hearing, Appellant was interrogated by five "investigators" and was told by one of them that his papers would

be taken away because he was uncooperative in identifying certain seamen suspected of using narcotics; that three of these suspects were crew members of the ALCOA CLIPPER at the time; that nothing had been disclosed by a thorough search of Appellant's quarters and clothing at Mobile, Alabama, a few days prior to this incident; and that Appellant has never been convicted of any crime involving the use or dealing in narcotics.

APPEARANCES: William M. Clarke, Esquire, of Mobile, Alabama.

FINDINGS OF FACT

On 2 August, 1951, Appellant was serving as steward utility on board the American SS ALCOA CLIPPER and acting under authority of his Merchant Mariner's Document No. Z-774844 while said vessel was in the port of New Orleans, Louisiana.

While searching Appellant's quarters during the morning working hours on this date, Port Patrol Officer Signorelli found a cigarette butt (about one half inch long) and two seeds which were under two of the three pair of trousers contained in a suitcase belonging to the Appellant. The butt and seeds were in a piece of soft white paper. The suitcase was located behind a cabinet in Appellant's quarters which he shared with three other members of the crew. Since Signorelli suspected that the discovered articles contained marijuana, he sent for Appellant, wrapped the cigarette and seeds in brown paper and gave it to Customs Inspector Delarosa. When Appellant arrived at his quarters, he admitted ownership of the suitcase but denied that the butt and seeds belonged to him. Appellant was then taken to the Custom House and further questioned. At this time, Delarosa had the butt and seeds analyzed by Chemist McCombs, an employee of the U. S. Customs Laboratory. The analysis disclosed that the substance in question contained one grain of marijuana. Prior to 2:00 P.M. on this date, Appellant was served with a copy of the charge and specification.

There is no record of any prior disciplinary action having been taken against Appellant during his five years at sea.

OPINION

Appellant's primary contention on appeal is that he was given insufficient notice of the hearing and, therefore, he was not afforded a reasonable opportunity to prepare his defense. Specifically, it is claimed that Appellant was not given time: (1) to find out whether any of the crew who had access to his quarters were habitual users of marijuana or other narcotics; (2) to discover whether any of the three crew members of the ALCOA CLIPPER, who were narcotics suspects, were habitual users of narcotics aboard ship; or (3) to produce witnesses who would testify to Appellant's good character and that he is neither a user nor dealer in narcotics.

I am convinced that Appellant's rights with respect to sufficiency of notice were adequately protected despite the fact that the hearing was conducted on the same day that service of the charge and specification was made upon Appellant. In his opening statement, the Investigating Officer said

he had warned Appellant that his document would probably be revoked if the charge was found proved; he had told Appellant that he should get someone to represent him because of the seriousness of the charge; and had informed Appellant that he had the right to request the appearance of any witnesses he desired. Appellant was again informed by the Examiner, at the commencement of the hearing, of the possible outcome; and that he had the right to be represented by counsel and to have witnesses subpoenaed to testify in his behalf. Despite this repeated advice, Appellant did not, at any time throughout the hearing, request or indicate that he required an adjournment in order to have additional time to investigate his shipmates or otherwise prepare his defense; nor did he at any time indicate the slightest desire to have witnesses subpoenaed to appear in his behalf. By his failure to take advantage of the opportunities afforded at the hearing, Appellant waived these rights and cannot now raise them. It is evident from the record that his right to an adjournment and to produce witnesses was not timely made at the hearing.

It is my opinion that Appellant's other contentions are without merit. He had ample time and opportunity at the hearing to make a statement concerning the alleged threat by an "investigator" that his papers would be taken from him. This certainly would have impressed him sufficiently to mention it during the course of the hearing. The fact that a search of Appellant's belongings at Mobile, a few days earlier, had disclosed no evidence of narcotics, is not relevant to the allegations upon which this proceeding is based. Although Appellant has never been convicted of any narcotics crime, the seriousness of this offense requires, for the sake of the safety of seamen and ships, that first offenders be denied the privilege of sailing on ships of the American Merchant Marine.

The Examiner found that Appellant's denial of knowledge of possession did not overcome the prima facie case which was made out by the presumption of knowledge arising from proof of possession. Therefore, the conclusion that the charge and specification were "proved" is adequately supported by the prima facie case.

ORDER

The order of the Examiner dated 2 August, 1951, should be, and it is, AFFIRMED.

M. C. Richmond
Rear Admiral, United State Coast Guard
Acting Commandant

Dated at Washington, D. C., this 10th day of December, 1951.